

REMARKS

Applicants request reconsideration and allowance of the subject application in view of the following remarks.

Claims 1-80 are pending, with Claims 1, 28, 37, 53, 54, 64, 74 and 80 being independent.

Initially, Applicants acknowledge with appreciation the indication that Claims 1-53 and 74-80 are allowable.

In the Office Action, Claims 54-63 were rejected based on statutory double patenting under 35 U.S.C. § 101, as claiming the same invention as Claims 1-10 of U.S. Patent No. 6,824,079 (Kendrick et al.). Claims 64-73 were rejected under the judicially created doctrine of obviousness-type double patenting, as being obvious over Claims 1-20 of the Kendrick et al. patent. These rejections are respectfully traversed.

The rejection of Claims 54-63 based on statutory double patenting should be withdrawn. A statutory double patenting rejection is only proper where the subject matter being claimed in the application is identical to the subject matter claimed in the cited patent. See MPEP § 804 II(A). Double patenting does not exist where an embodiment of the invention falls within the scope of one claim but not the other. In this case, Claim 54 of the subject application recites “wherein the propellant is a liquefied gas propellant,” whereas Claim 1 of the Kendrick et al. patent recites “wherein the propellant is a dual phase propellant”. Applicants submit that the terms “liquefied gas propellant” and “dual phase propellant” are not synonymous, and that the term “liquefied gas propellant” includes propellants other than dual phase propellants. Thus, a propellant could be a

liquefied gas propellant within the scope of Claim 54 of the subject application and not be a dual phase propellant within the scope of Claim 1 of the Kendrick et al. patent.

For at least the foregoing reasons, Applicants submit that the statutory double patenting rejection of Claims 54-63 should be withdrawn.

With respect to the obviousness-type double patenting rejection of Claims 64-73, without conceding the propriety of the rejection, Applicants submit herewith a Terminal Disclaimer, thereby obviating the obviousness-type double patenting rejection. Withdrawal of the obviousness-type double patenting rejection of Claims 64-73 is respectfully requested.

Accordingly, Applicants submit that Claims 1-80 are in condition for allowance.

In view of the foregoing remarks and the concurrently-filed Terminal Disclaimer, Applicants respectfully request favorable reconsideration and early passage to issue of the subject application.

Applicants' attorney Frank B. McDonald may be reached by telephone at (262) 260-2000. All correspondence should continue to be directed to the below-listed address for S.C. Johnson & Son, Inc.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David A. Divine", written over a horizontal line.

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